

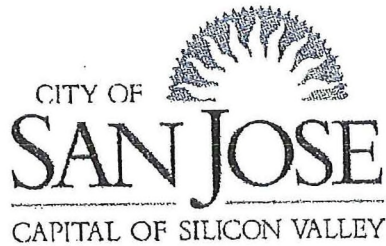
Memorandum of Agreement

City of San José

and

International Association of Firefighters

Local 230



July 1, 2009 – June 30, 2013

- 26.1.6 Except as otherwise provided by resolution of the City Council, paid sick leave shall not be allowed for any absence from work occasioned by intoxication, chronic alcoholism or use of narcotics not prescribed by a licensed physician.
- 26.1.7 No employee shall be entitled to or be granted sick leave, either with or without pay, unless the employee, or someone on their behalf, notifies the employee's immediate superior or department head of their intent to take such sick leave, and of the reasons therefore, as soon as possible but not less than one (1) hour prior to the commencement of the employee's scheduled work day. However, the City Manager may waive the requirements of such notice upon presentation of a reasonable excuse of such employee.
- 26.1.8 An employee may be required to furnish substantiation for any absence for which sick leave payment is requested.
- 26.1.9 A full-time employee of the City shall be entitled to sick leave without any pay if required to be absent from work on account of any non-job related illness, injury or disability, including absences of female employees related to pregnancy or childbirth, or on account of routine medical or dental appointment needs of the employee, in all situations where such employee is not entitled to sick leave with pay. No single period of sick leave without pay shall exceed twelve (12) months in any twenty-four (24) month period, and any full-time employee who is unable to return to work after being absent therefrom for twelve (12) months in any twenty- four (24) month period on unpaid sick leave shall be considered to have voluntarily resigned.
- 26.2 Sick Leave Payoff. There shall be paid to each full-time employee of the City:
- 26.2.1 Who qualifies for retirement and retires from the service of the City under and pursuant to the provisions of any applicable retirement plan of the City except Chapter 3.28 of Title III, of the San José Municipal Code, other than a full-time employee who retires or becomes eligible for retirement allowances pursuant to the provisions of Section 3.24.510, Section 3.32.370, or Section 3.36.1630 of the San José Municipal Code; or
- 26.2.2 Who qualifies for retirement and retires from the service of the City under and pursuant to the provisions of Chapter 3.28 of Title III of the San José Municipal Code, and who, at the time of such retirement, is credited with at least fifteen (15) years or twenty (20) years of service, whichever is applicable, in said retirement plan; or
- 26.2.3 Whose service with the City is terminated, and who, subsequent to such termination of service, qualifies for retirement and retires pursuant to the provisions of said Section 3.24.510, Section 3.32.370 or Section 3.36.1630, of the San José Municipal Code, and who, at the time of such retirement, is credited with at least fifteen (15) or twenty (20) years of service in the applicable retirement plan; or
- 26.2.4 To the estate of any full-time employee who had terminated service with the City but had retained rights in a retirement system according to provisions in the SJMC, and dies (on or after July 10, 1977) prior to becoming as cited under provisions of the SJMC, and has at the time of death credit for at least twenty (20) years of service in the applicable retirement plan.

26.2.5 To the estate of any full-time employee of the City of San José who dies prior to such retirement, even though the employee is not credited with at least fifteen (15) or twenty (20) years of service in any applicable retirement plan, as additional compensation for not having used all or some of their accumulated sick leave with pay, such compensation as shall equal the greatest of the following:

- (a) If such full-time employee, at the time of retirement or death, shall have accumulated and has to their credit less than four-hundred (400) hours, or five-hundred sixty (560) hours for any full-time employee who is assigned to twenty four (24) hour shifts, of earned unused sick leave, the employee or their estate, shall be paid a sum of money equal to fifty percent (50%) of the employee's hourly rate of pay at the time of death, retirement, or termination, whichever is earlier, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of death or retirement;
- (b) If such full-time employee, at the time of retirement or death, shall have accumulated and has to their credit, at least four-hundred (400) hours, or five-hundred sixty (560) hours for any full-time employee who is assigned to twenty-four (24) hour shifts, but less than eight-hundred (800) hours, or one-thousand one-hundred twenty (1,120) hours for any full-time employee who is assigned to twenty-four (24) hour shifts, of earned unused sick leave, the employee or their estate, shall be paid a sum of money equal to sixty percent (60%) of the employee's hourly rate of pay at the time of death, retirement or termination, whichever is earlier, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of death or retirement;
- (c) If such full-time employee, at the time of retirement or death, shall have accumulated and has to their credit at least eight-hundred (800) hours, or one-thousand one-hundred twenty (1,120) hours for any full-time employee who is assigned to twenty-four (24) hour shifts, but less than one-thousand two-hundred one (1,201) hours, or one-thousand six-hundred eighty (1,680) for any full-time employee who is assigned to twenty-four (24) hours shifts, of earned unused sick leave, the employee or their estate, shall be paid a sum of money equal to eighty percent (80%) of the employee's hourly rate of pay at the time of death, retirement or termination, whichever is earlier, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of death or retirement;
- (d) If a full-time employee, at the time of service retirement or death, has accumulated and has to their credit at least one-thousand two-hundred one (1,201) hours, or one-thousand six-hundred eighty (1,680) hours for any full-time employee who is assigned to twenty-four (24) hour shifts, or greater of earned unused sick leave, the employee or their estate, shall be paid a sum of money equal to one-hundred percent (100%) of the employee's hourly rate of pay at the time of death or service, whichever is earlier, multiplied by the total number of accumulated and unused hours of sick leave as of the date of death or retirement. If after retirement the employee switches from service to disability retirement, the employee shall repay to the City the difference in sick leave payout between service and disability retirement (e.g. one-hundred percent (100%) service, eighty percent (80%) disability).

26.2.6 For purposes of payment of accumulated sick leave as provided in this Article, sick leave accumulated during prior periods of employment shall be credited to the employee. Such previously accumulated sick leave shall be credited to the employee for use during such employee's current employment.

26.2.7 For purposes of the sick leave payoff benefit, service with the Central Fire District will be counted as years of service for the City for former employees of the Central Fire District who transferred to the City under the consolidation.

ARTICLE 27 DISABILITY LEAVE

- 27.1 Subject to the terms, conditions, limitations and other provisions contained in this Article, a full-time employee of the City who is required to be absent from active service for the City as the result of injury arising out of and in the course of their full-time employment with the City, shall be deemed to be on disability leave of absence from active City service from the time the employee is required, because of such injury to be absent from active City service, to the time the employee is no longer required by such injury to be absent from such active service or until their employment with the City ends or is terminated, whichever is the earlier time, and, in such situation, such full-time City employee shall be entitled to receive, and shall be paid, in lieu of the employee's regular salary, and in addition to such temporary disability compensation as they may be entitled to under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California, such temporary disability leave compensation, if any, as the employee may be entitled to under the following provisions of this Article for the periods of time hereinafter specified in this Article.
- 27.2 Anything elsewhere to the contrary notwithstanding, no full-time employee of the City who is required to be absent from active service for the City as a result of any injury shall be deemed to be on disability leave of absence, or be entitled to any compensation or other benefits under the provisions of this Article unless such employee, as a result and because of such injury and absence from active City service, is entitled to temporary disability compensation from the City under and by virtue of the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.
- 27.3 If the Workers' Compensation Appeals Board of the State of California, or any judicial court having jurisdiction over the matter, should determine that such employee is not entitled to temporary disability compensation from the City under said provisions of said Labor Code, said employee shall not be entitled to any benefits under the provisions of this Article, and any moneys theretofore paid to the employee under the provisions of this Article shall be deemed to have been paid in error, and the City shall be entitled to recover the same.
- 27.4 An employee of the City shall not be deemed to be on disability leave of absence and shall not be entitled to any compensation or other benefits under the provisions of this Article if the injury as a result of which the employee is required to be absent from active City service results from any work voluntarily undertaken by such employee which they had been prohibited from engaging in prior to the date of such injury by an examining physician of the City.
- 27.5 An employee of the City shall not be deemed to be on disability leave of absence and shall not be entitled to any compensation or other benefits under the provisions of this Article for any